

COMPLEX SHARES SALE TRANSACTION

Our clients, owners of a successful business in the services sector, received an offer from a large American corporation interested in acquiring their Spanish company. The buyer initially acquired 70% of the shares, allowing the sellers to continue with the management of the business, as minority shareholders, for the next two years.

Although this is a commonly used approach in [M&A](#) for acquiring a business, it brings additional complexity to the deal since it is necessary to regulate not only the initial transaction, but also the interim period until the buyer finally takes over the whole company after those two years. But this two-step acquisition formula has several advantages for both parties.

From the buyer's point of view, it seeks to optimize and protect its investment. On the one hand, it has the security of holding a majority stake in the company from the outset, but the sellers retain a sufficient shareholding to remain committed and motivated to continue generating value to the company until the remaining 30% is purchased from them. In this way, the buyer manages to protect the company's goodwill and other intangible assets, as well as to avoid any type of talent, clientele or supplier drain, thus achieving a smooth transition. It also helps to postpone the payment of 30% of the price to a later time.

From the perspective of the sellers, and managers of the company, it helps to monetize with immediate effect the majority of their stake in the company, but at the same time it brings the possibility of maximizing the value of their remaining 30%, with the growth they can achieve during the interim period thanks to their continued management of the company and the synergies generated with the buyer's business, which will turn into a higher price for the remaining 30% of the shares if the company's EBITDA increases after two years.

Under this scenario, the rights of the minority shareholders had to be regulated and protected once the first step of the transaction was completed. In addition, one of the minority partners would continue playing the role of Chief Executive Officer of the company, and the buyer wanted to ensure that his services would be available for at least the following three years, so his continuity and dedication to the project, as a key person in the business, had to be regulated in detail.

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A call option was agreed so that the buyer had the right to acquire in the future all the remaining shares and, on the sellers' side, a put option was agreed, so that they had the option to demand the purchase of their shares at pre-agreed prices based on the same EBITDA multiplier.

Our advice consisted in negotiating with the buyer the initial Letter of Intent detailing the legal structure of the transaction and the formula for the calculation of the purchase price; assisting the Spanish company in the preparation of the Data Room for performing the Due Diligence; negotiating with the buyer the guarantees to be provided by the sellers in the Shares Purchase Agreement; the review and negotiation of the SPA terms, the Put and Call Option agreement, the Shareholders' Agreement, the CEO Agreement and the preparation of the corporate changes resulting from the entry of a majority shareholder and the appointment of a new [Board of Directors](#). As the buyer was American, all the negotiations and documents were conducted and prepared in English language.

It happened that after signing the LOI and prior to the Due Diligence, the Covid19 pandemic broke out and caused the buyer to temporarily suspend the transaction. Once the pandemic was overcome, and given the great resilience of the business to be acquired, the buyer resumed negotiations and ended up acquiring the Spanish company at a much higher price than initially expected, given the substantial improvement of the business and its EBITDA.

In addition to the complexity inherent to this type of transaction, in which there are several interrelated and interdependent negotiations and agreements, there was also the need to sign the transaction subject to the fulfillment of certain conditions, which was carried out using the structure commonly known as "zero deed", in which the closing of the transaction occurs only if these conditions are met within the agreed term.

Finally, the transaction was successfully closed and the Spanish company is now part of an American multinational group with great growth potential, with our clients retaining a minority stake in the Spanish company. The sellers are satisfied and highly motivated to continue generating value and growth for the Spanish business and their Put Option.

Our firm continues advising on the day-to-day matters of the Spanish company, and holds the position of Secretary of the Board of Directors.

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